

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STACY W. NIELSEN,

Defendant.

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CASE NO. 8:04CR151

**MEMORANDUM
AND ORDER**

This matter is before the Court on the motion to proceed with appeal in forma pauperis (Filing No. 57), and motion to appoint counsel (Filing No. 59) filed by the Defendant, Stacy Nielsen. Nielsen has also filed a Notice of Appeal. (Filing No. 55.)

The Defendant was permitted to proceed in district court as one financially unable to obtain adequate defense. Therefore, the Defendant may proceed on appeal in forma pauperis without further authorization, unless this Court certifies that the appeal is not taken in good faith or finds that the Defendant is not otherwise entitled to proceed in forma pauperis. Fed. R. App. P. 24(a)(3). The Court does not intend to so certify or find.

Therefore, the motion to proceed with appeal in forma pauperis will be denied as moot, and the Defendant may proceed on appeal in forma pauperis.

The matter of appointment of counsel is for the Eighth Circuit Court of Appeals to decide, and the Clerk will forward the motion to the Court of Appeals.

IT IS ORDERED:

1. The Motion to Proceed With Appeal In Forma Pauperis (Filing No. 57) is denied as moot;

2. The Defendant, Stacy W. Nielsen, may proceed on appeal in forma pauperis;
3. The Clerk is directed to forward the notice of appeal and the Defendant's motion to appoint counsel (Filing No. 59) to the Eighth Circuit Court of Appeals for resolution; and
4. A copy of this Memorandum and Order shall be mailed to the Defendant at his last known address.

DATED this 3rd day of January, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge